Pacific Telephone Company *and* Communications Workers of America, AFL-CIO, Petitioner. Case 20-RC-15087

June 9, 1981

DECISION AND DIRECTION OF SECOND ELECTION

The National Labor Relations Board has considered objections to an election held on June 20, 1980,[1] and the Regional Director's report recommending disposition of same. The Board has reviewed the record in light of the exceptions, and hereby adopts the Regional Director's findings and recommendations.[2]

As found by the Regional Director, Petitioner's Objection 1 alleges that on June 16, 1980, an agent of the Employer made material misrepresentations of fact and law to the employees which affected the results of the election. On that date the Employer's manager distributed a letter to unit employees which reads, in pertinent part, as follows:

> Between now and June 20, you will have to decide for yourself whether you will be better off with or without a union. This is an important decision and I strongly encourage you to give it careful consideration.
>
> The first question you must ask yourself is, "Do I really need a union?" Personally, I believe the answer is "No."
>
> The main function of a union is to bargain with the Company to improve wages, hours and working conditions. The fact of the matter is, however, that the wages, hours and benefits you receive today are *equal* to those provided to Pacific Company Business Service Centers employees represented by a union.
>
> The fact that your present wages, hours and benefits are equal to those of union represented employees is the result of the Company's long standing policy to provide similar wages and working conditions to all employees regardless of whether employees are union represented or not.
>
> Thus, I believe you already receive in wages and benefits *all* that you could reasonably expect a union to obtain for you. And you receive *equal* wages and benefits without having to pay union dues or being subject to union bylaws or regulations.

In finding that the Employer's statements in the above letter were objectionable, the Regional Director relied on our recent decision in *American Telecommunications Corporation, Electromechanical Division*, 249 NLRB 1135 (1980).[3] In that case, an NLRB representation election had been held at one of the employer's facilities and organizing was underway at a second facility. In response to the activity at its second facility, the employer told employees that they would receive any benefits secured by the union for employees at the unionized facility because the company made a practice of spreading benefits equally throughout all operating divisions. The employer added that the employees did not need a union because they would just pay dues and get nothing for it. The Board found these statements violative of Section 8(a)(1) of the Act, on several interrelated grounds. First, the employer's statement to unit employees that they would receive all the benefits of a union contract without a union constituted a promise of benefits made for the purpose of coercing employees into rejecting a union. Second, the statement indicated that union representation for unit employees would be a futility and that in no event would union representation result in improvements of working conditions for unit employees. Finally, the employer made clear to employees the futility of the selection of a bargaining representative by also stating that with "a union you just pay dues and get nothing for it . . . ."[4]

The facts in the instant case are strikingly similar. Thus, here, as in *American Telecommunications*, the Employer not only stated that the unrepresented employees received benefits equal to represented employees, he also stated that employees would continue to receive such benefits whether represented by a union or not. This constitutes the promise of a benefit to encourage employees to reject the union and indicates to employees the futility of selecting a representative. The indication of futility is highlighted by the Employer's statement that employees already receive in wages and benefits all they could expect a union to obtain for

[1] The election was conducted pursuant to a Stipulation for Certification Upon Consent Election. The tally was 10 votes for Petitioner, 7 for the intervenor (Telecommunications International Union), and 25 against the participating labor organizations; there was 1 challenged ballot which was not sufficient to affect the results of the election.

[2] In the absence of exceptions, we adopt, *pro forma*, the Regional Director's recommendation that the Petitioner's Objections 2, 3, 4, 5, and 6 be overruled.

[3] The Regional Director found it unnecessary to determine whether Objection 1 encompassed the statements of the June 16, 1980, letter, in light of her finding that Board precedent permits an election to be set aside on the basis of objectionable conduct not specifically alleged but discovered during the course of the Regional Director's investigation of specific objections.

[4] The Board also found the respondent employer's statement was contrary to the bargaining obligation that would ensue if the union were certified at one of its plants. Neither this factor, nor the fact that respondent employer's remarks concerned uniform benefits at several facilities significantly distinguish *American Telecommunications* from the instant case.

them. It is implicit, perhaps even overt, in the employer's statements that the policy of providing the same wages, with or without a union, would be continued in the event the union won the election, and the statements thus crossed to the wrong side of the line. As the Board observed in *Turner Shoe Company, Inc.*, 249 NLRB 144, 146 (1980):

> Communications which hover on the edge of the permissible and the unpermissible are objectionable as "[i]t is only simple justice that a person who seeks advantage from his elected use of the murky waters of double *entendre* should be held accountable therefor at the level of his audience rather than that of sophisticated tribunals, law professors, scholars of the niceties of labor law or 'grammarians.'" [*Georgetown Dress Corporation*, 201 NLRB 102, 116 (1973)]. As the Supreme Court has noted, an employer "can easily make his views known without engaging in 'brinksmanship' when it becomes all too easy to 'overstep and tumble [over] the brink,' *Wausau Steel Corp.* v. *N.L.R.B.*, 377 F.2d 369, 372 (7th Cir. 1967). At the least he can avoid coercive speech simply by avoiding conscious overstatements he has reason to believe will mislead his employees." [*N.L.R.B.* v. *Gissel Packing Co.*, 395 U.S. at 620].

Further, as in *America Telecommunications*, the Employer herein indicated that if the employees selected the Union they would pay dues and receive nothing for it. Thus, for the reasons we held the respondent employer's conduct to be unlawful in *American Telecommunications*, we find the Employer's conduct at issue herein to be objectionable. Accordingly, we shall set aside the election, and issue the following:

[Direction of Second Election and *Excelsior* footnote omitted from publication.]